

**Supplemental Summary of Personal Income Tax
Legislative Changes Enacted in 2005 and Expiring Provisions**

This TSB-M is the summary of personal income tax legislation signed into law in 2005 by Governor Pataki that was not addressed in TSB-M-05(5)I, *Summary of Certain Personal Income Tax Legislative Changes Enacted in 2005*. This TSB-M also contains information relating to Tax Law provisions enacted in prior years that have expired.

The following legislative changes are summarized in this memo:

- Yonkers resident income tax surcharge and nonresident earnings tax;
- Investment tax credit for qualified film production facilities;
- Fuel cell electric generating equipment credit;
- Security officer training tax credit;
- Enhancement of farmers' school tax credit eligibility;
- Exception to recapture of the empire zone investment tax credit;
- Furnishing of information to the Higher Education Services Corporation;
- Solar energy system equipment credit;
- World Trade Center Memorial Foundation contribution; and
- Expiring provisions.

Yonkers resident income tax surcharge and nonresident earnings tax

The Yonkers resident income tax surcharge and the Yonkers nonresident earnings tax have been extended through tax years ending on or before December 31, 2007. Under previous law, these taxes would have expired for tax years beginning after 2005. In addition, effective January 1, 2005, the Yonkers resident income tax surcharge has been increased from a rate of 5% to a rate of 10% of the net state tax and the Yonkers nonresident earnings tax has been increased from a rate of .25% to a rate of .5% of wages and net earnings from self-employment. However, the new law provides that the underpayment of estimated tax penalty will not be imposed on the portion of any underpayment for tax year 2005 that is attributable to the increase in the rates.

(Tax Law, sections 1321, 1332, 1340 and 1342; Codes and Ordinances of the City of Yonkers, 15-100, 15-111, 15-116, 15-117)

Investment tax credit for qualified film production facilities

The Tax Law has been amended to allow the investment tax credit to a taxpayer who acquires property where (a) the property is principally used as a qualified film production facility, including qualified film production facilities located in an empire zone as designated pursuant to Article 18-B of the General Municipal Law, and (b) the taxpayer provides three or more services to any qualified film production company using that facility. These services include, but are not limited to, the following:

- a studio lighting grid,
- lighting and grip equipment,
- multi-line phone service,
- broadband information technology access,
- industrial scale electrical capacity,
- food services,
- security services, and
- heating, ventilation and air conditioning.

For purposes of the investment tax credit, the use of a qualified film production facility by a qualified film production company is not considered a lease of such facility to such company. In addition, *qualified film production facility* and *qualified film production company* means those facilities and companies as defined under section 24 of the Tax Law (relating to the Empire State film production credit.) However, any property used to claim the Empire State film production credit cannot be used to claim the investment tax credit.

This provision applies to property placed in service after January 1, 2005, or to buildings or structural components of buildings for which a final certificate of occupancy is received after January 1, 2005.

(Tax Law, section 606(a))

Fuel cell electric generating equipment credit

Effective for tax years beginning on or after January 1, 2005, individuals, including partners in a partnership (including members of an LLC that is treated as a partnership for federal income tax purposes), shareholders of S corporations, and beneficiaries of estates and trusts may claim the fuel cell electric generating equipment credit. The credit applies to qualified fuel cell electric generating equipment expenditures made on or after July 1, 2005, and must be claimed for the tax year in which the fuel cell electric generating equipment is placed in service.

Note: Estates and trusts cannot claim their share of the credit directly on the estate's or trust's fiduciary return. However, beneficiaries are eligible to claim their share of the credit from the estate or trust on their tax return.

For purposes of this credit:

- *fuel cell electric generating equipment* means an on-site electricity generation system that utilizes proton exchange membrane fuel cells, providing a rated baseload capacity of at least one kilowatt but no more than 100 kilowatts of electricity operated in accordance with applicable industry standards.
- *Qualified fuel cell electric generating equipment expenditures* means qualified expenditures incurred on or after July 1, 2005, associated with the purchase of fuel cell electric generating equipment which is installed and used in New York State.

- *Qualified expenditures* include those expenditures relating to the fuel cell electric generating equipment incurred on or after July 1, 2005, for: materials; labor costs properly allocated to on-site preparation, assembly and original installation; engineering services, designs and plans directly related to construction or installation; and utility compliance costs.

Under prior law, for tax years beginning on or after January 1, 2003, individuals could claim a credit for fuel cell electric generating equipment installed at their principal residence. The new law eliminates the prior credit, effective for tax years beginning on or after January 1, 2005, and replaces it with this new credit. Individuals are no longer required to have the fuel cell electric generating equipment installed at their principal residence to qualify for the credit. However, since the new credit applies to expenditures made on or after July 1, 2005, individuals cannot claim a credit for any fuel cell electric generating equipment expenditures incurred between January 1, 2005, and July 1, 2005.

This provision takes effect for tax years beginning on or after January 1, 2005, for costs incurred on or after July 1, 2005.

(Tax Law, sections 606(g-2) and 606(i))

Security officer training tax credit

The Tax Law has been amended to provide for a security officer training tax credit. The credit is provided to an individual, including a partner in a partnership (including a member of a limited liability company that is treated as a partnership for federal income tax purposes), a shareholder of a New York S corporation, an estate or trust, or a beneficiary of an estate or trust, which is a qualified building owner employing qualified security officers. If the amount of the credit awarded exceeds the taxpayer's tax for the year, the excess will be credited or refunded (without interest).

There is an annual cap of \$5 million on the aggregate amount of the New York State credit allowed. The security officer training program will be administered by the New York State Office of Homeland Security. Taxpayers must file an application with the Office of Homeland Security to receive an allocation of the credit. For more information about this credit, visit the New York State Office of Homeland Security website at www.security.state.ny.us.

(Tax Law, sections 26, 606(ii), 606(i))

Enhancement of farmers' school tax credit eligibility

Section 606(n) of the Tax Law has been amended to provide two new enhancements to the farmers' school tax credit. The new legislation, described below, expands the definitions of *school district property taxes* and *federal gross income from farming*.

The first enhancement provides that for tax years beginning in 2005 and after, a taxpayer who is an eligible farmer will be able to claim the credit for *eligible school district property taxes* paid on qualified agricultural property **owned by the taxpayer's father, mother, grandfather, grandmother, brother or sister**, provided (a) the taxpayer has entered into a

written agreement expressing his or her intent to eventually purchase the property, and (b) the owner(s) has given the taxpayer a document stating that the owner(s) is waiving his or her right to claim the credit, if any, on the qualified agricultural property that is subject to the written agreement. The taxpayer can claim the credit for the property that is subject to the written agreement and the waiver even if the taxpayer did not actually pay the school district property taxes on the qualified agricultural property.

The written agreement does not have to be in any particular legal form but it must be signed by all parties to the agreement and must have been in effect for at least part of the tax year to which the credit relates. The waiver document does not have to be in any particular form, but it can be for only one tax year and must include (1) the name of the owner(s), (2) the name of the relative with whom the owner(s) has entered into a written agreement to sell his or her qualified agricultural property, (3) a statement that the owner(s) is waiving his or her right to claim the farmers' school tax credit, (4) the tax year to which the waiver applies (e.g., 2005), (5) the date the agreement to sell was entered into, and (6) the signature of the owner(s). The waiver document must be given to the taxpayer even if the owner(s) does not qualify to claim the farmers' school tax credit on the property. Once the waiver is made for a tax year, it cannot be revoked for that tax year, but the owner(s) may decide whether or not to issue a waiver for any subsequent tax year.

The second enhancement provides that for tax years beginning on or after January 1, 2006, the definition of *federal gross income from farming* will also include gross income from a commercial horse boarding operation as defined in section 301 of the Agriculture and Markets Law.

(Tax Law, section 606(n))

Exception to recapture of the empire zone investment tax credit

Section 606(j) of the Tax Law has been amended to provide for an exception to the recapture provisions of the empire zone investment tax credit (EZ-ITC). In general, a recapture of the EZ-ITC must be made when the qualified property for which an EZ-ITC has been claimed is disposed of or ceases to be in qualified use prior to the end of its useful life. The sale or other disposition of a partner's interest in a partnership is considered a disposition for purposes of the recapture provisions.

As a result of this amendment, the EZ-ITC recapture provisions do not apply with respect to manufacturing property where a partner disposes of the partnership interest, or the partnership disposes of the manufacturing property, if:

- the basis of the manufacturing property (or a project that includes such property) was \$300 million or more for federal income tax purposes at the time it was placed in service by the partnership in the empire zone, and
- the partner owned the partnership interest for at least 3 years from the date such property was placed in service by the partnership in the empire zone.

However, if the property ceases to be in qualified use by the partnership after it is placed in service, the recapture provisions do apply to such partner in the year the property ceases to be in qualifying use.

This provision applies to tax years beginning on or after December 20, 2005.

(Tax Law, section 606(j))

Furnishing of information to the Higher Education Services Corporation

Tax Law section 697(e) has been amended to authorize the Department of Taxation and Finance to provide certain information to the New York State Higher Education Services Corporation (HESC) for the purpose of assisting HESC in default prevention and default collection on federally guaranteed student loans through the Federal Family Education Loan Program as codified in chapter 28 of Title 20 of the United States Code.

(Tax Law, section 697(e))

Solar energy system equipment credit

The Tax Law has been amended to change the *solar electric generating equipment credit* to the *solar energy system equipment credit*. The amendment expands the credit to include solar energy system equipment which utilizes solar radiation to provide heating, cooling, hot water, or electricity for use in a residence. However, equipment connected to solar energy system equipment that is a component of part or parts of a non-solar energy system or which uses any sort of recreation facility or equipment as a storage medium does not qualify.

In addition, the maximum credit is increased to \$5,000 for property placed in service on or after September 1, 2006. The credit is \$3,750 for qualified solar energy equipment placed in service before September 1, 2006.

This provision applies to taxable years beginning on or after January 1, 2006.

(Tax Law, section 606(g-1))

World Trade Center Memorial Foundation contribution

For tax years beginning on or after January 1, 2005, new section 630-a has been added to the Tax Law to allow personal income tax return filers to make gifts on their returns to the World Trade Center Memorial Foundation. The gift can be any whole dollar amount and will not reduce the amount of tax owed.

(Tax Law, section 630-a)

Expiring Provisions

This section of the TSB-M contains information relating to Tax Law provisions enacted in prior years that have expired

New York State temporary increase in personal income tax rates and additional tax benefit recapture provisions

For tax years beginning after 2005, the two temporary highest tax brackets that applied to tax years 2003 through 2005 have expired. Accordingly, the New York State personal income tax rates for tax years beginning in 2006 are as follows:

Married filing jointly and qualifying widow(er)

If the New York taxable income is:	The tax is:
Not over \$16,000	4% of the New York taxable income
Over \$16,000 but not over \$22,000	\$640 plus 4.5% of the excess over \$16,000
Over \$22,000 but not over \$26,000	\$910 plus 5.25% of the excess over \$22,000
Over \$26,000 but not over \$40,000	\$1,120 plus 5.9% of the excess over \$26,000
Over \$40,000	\$1,946 plus 6.85% of the excess over \$40,000

Single, married filing separately, and estates and trusts

If the New York taxable income is:	The tax is:
Not over \$8,000	4% of the New York taxable income
Over \$8,000 but not over \$11,000	\$320 plus 4.5% of the excess over \$8,000
Over \$11,000 but not over \$13,000	\$455 plus 5.25% of the excess over \$11,000
Over \$13,000 but not over \$20,000	\$560 plus 5.9% of the excess over \$13,000
Over \$20,000	\$973 plus 6.85% of the excess over \$20,000

Head of household

If the New York State taxable income is:	The tax is:
Not over \$11,000	4% of the New York taxable income
Over \$11,000 but not over \$15,000	\$440 plus 4.5% of the excess over \$11,000
Over \$15,000 but not over \$17,000	\$620 plus 5.25% of the excess over \$15,000
Over \$17,000 but not over \$30,000	\$725 plus 5.9% of the excess over \$17,000
Over \$30,000	\$1,492 plus 6.85% of the excess over \$30,000

In addition, the two additional tax benefit recapture provisions that applied to tax years 2003 through 2005 have expired. Accordingly, the only tax benefit recapture provision applicable to tax years beginning after 2005 is the recapture of the tax benefit on the rates below 6.85% for taxpayers with a New York adjusted gross income of \$100,000 or more.

(Tax Law, section 601(a), (b), and (c))

New York City temporary increase in resident personal income tax rates and tax benefit recapture provisions

The New York City personal income tax rates for residents, imposed under section 11-1701(a) of the Administrative Code of the City of New York (the Code), the 14% additional tax imposed under section 11-1704.1, and the 2.85% minimum income tax imposed under section 11-1702 of the Code have been extended to tax years beginning before 2009. The resident tax rates under section 11-1701(a) and the additional tax under section 11-1704.1 were temporarily suspended for tax years 2003, 2004, and 2005, and replaced with new rates and a tax benefit recapture under sections 11-1701(g) and (h) of the Code.

Since the tax rates and tax benefit recapture imposed under sections 11-1701(g) and (h) have expired for tax years beginning after 2005, the tax rates contained in section 11-1701(a) of the Code and the 14% additional tax under section 11-1704.1 of the Code will apply to tax years beginning after 2005 and before 2009. Accordingly, the New York City personal income tax rates for tax years beginning in 2006 are as follows:

Married filing jointly and qualifying widow(er)

If the city taxable income is:	The tax is:
Not over \$21,600	2.907% of city taxable income
Over \$21,600 but not over \$45,000	\$628 plus 3.534% of the excess over \$21,600
Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of the excess over \$45,000
Over \$90,000	\$3,071 plus 3.648% of the excess over \$90,000

Single, married filing separately, and estates and trusts

If the city taxable income is:	The tax is:
Not over \$12,000	2.907% of city taxable income
Over \$12,000 but not over \$25,000	\$349 plus 3.534% of the excess over \$12,000
Over \$25,000 but not over \$50,000	\$808 plus 3.591% of the excess over \$25,000
Over \$50,000	\$1,706 plus 3.648% of the excess over \$50,000

Head of household

If the city taxable income is:	The tax is:
Not over \$14,400	2.907% of city taxable income
Over \$14,400 but not over \$30,000	\$419 plus 3.534% of the excess over \$14,400
Over \$30,000 but not over \$60,000	\$970 plus 3.591% of the excess over \$30,000
Over \$60,000	\$2,047 plus 3.648% of the excess over \$60,000

(Tax Law, section 1301, 1301-A, 1304, and 1304-B; Administrative Code of the City of New York, sections 11-1701, 11-1702, 11-1704.1)

Alternative fuels credit

The New York State Tax Law provided for personal income tax credits for the purchase of new electric vehicles or qualified hybrid vehicles, and for the conversion of gasoline powered or diesel powered vehicles to alternative fuel (clean-fuel) use. Investments in new clean-fuel vehicle refueling property also qualified for the credits. Except for qualified hybrid vehicles, which must have been placed in service in tax years beginning on or after January 1, 2000 and before 2005, the credit only applied to property placed in service in tax years beginning after 1997 and before 2005. Accordingly, no new alternative fuels credits will be allowed for property placed in service in tax years beginning after 2004. However, taxpayers who have a carryover from an alternative fuels credit allowed for property placed in service in a prior year may continue to carry that credit forward until it is used up.

For more information on the alternative fuels credits, see TSB-M-98(4)I, TSB-M-02(10)I and TSB-M-04(3.1)I.

(Tax Law, section 606(p); Chapter 60 of the Laws of 2004)

Construction employer filing requirements

Workers' compensation reform legislation enacted in 1998 imposed additional filing requirements on certain employers of construction workers. As a result, an employer with payroll in certain New York Compensation Insurance Rating Board construction classification codes were required to file Form NYS-45-CC, *Quarterly Supplemental Return for Construction Employers*, for each quarter in which the employer had at least one employee performing commercial construction work. The return was to be filed as a part of their NYS-45, *Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return*.

Effective January 1, 2006, no employer is required to file Form NYS-45-CC. Accordingly, the fourth quarter of 2005 was the last quarter Form NYS-45-CC was required to be filed.

(Tax Law, section 674(a)(6); Chapter 135 of the Laws of 1998)

Zone Equivalent Area (ZEA) wage tax credit

The ZEA wage tax credit was allowed to a business certified under Article 18-B of the General Municipal Law that met certain increased employment levels in New York State in a ZEA during the tax year. A *zone equivalent area* (ZEA) is an area within New York State that has been designated as a ZEA under Article 18-B of the General Municipal Law.

Effective June 13, 2004, the ZEA wage tax credit for all Zone Equivalent Areas has expired. For tax years beginning after June 13, 2004, taxpayers may only claim a ZEA wage tax carryover of credit from previous years.

(Tax Law section, 606(k); Chapter 170 of the Laws of 1994)